



CRM-M-30234-2024
127 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CRM-M-30234-2024
Decided on: 03.07.2024

Gulshan Jain through his power of attorney holder ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harmeet Singh, Advocate for
 Mr. Vikram Anand, Advocate
 for the petitioner.

Ms. Swati Batra, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
44	05.04.2018	Jandiala, District Amritsar (Rural)	406, 409, 420, 120-B IPC and 13(1)(D) r/w 13(2) of PC Act added later on

1. The petitioner residing in Canada, is aggrieved by being declared as a proclaimed offender and challenging the impugned orders dated 04.06.2019 passed by the Additional Sessions Judge, Amritsar, has come up before this Court under Section 482 CrPC.
2. The petitioner’s stand is that the FIR was registered on 05.04.2018, whereas he had already left India for Canada, on 02.04.2018. Petitioner had supplied a copy of the visa issued by Canada and stamp dated 02.04.2018 at Delhi Airport of immigration India with connotation departed on 02.04.2018. It is prima facie established that the petitioner was not in India when FIR was registered.
3. There is no dispute about the petitioner living in Canada, but State opposes the present petition.

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4. Be that as it may, the primary reason to quash the proclamation orders was that the petitioner was not in India when affixations were being made at their Indian address.

5. Another reason to quash the proclamation is the statutory provision of Section 105 CrPC. It shall be relevant to extract Section 105 of CrPC, 1973, which reads as follows:

105. Reciprocal arrangements regarding processes. —

(1) Where a Court in the territories to which

this Code extends (hereafter in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories,

it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the

contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.]

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by—

(I) a Court in any State or area in India outside the said territories;

(II) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,

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(ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101:

[Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

6. Thus, there is nothing to demonstrate that the State had either complied with the statutory provisions of Section 105 CrPC or were not required to comply with such provisions.

7. A perusal of the said statement reveals that the prosecution is complying with the provisions of Section 82 & 105 CrPC. Section 82 CrPC provides that affixation must be made where the petitioner resides. Given above, the proclamation was not affixed in terms of section 82 (2) (i) (a) & (b) of CrPC, which mandate that the proclamation shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; and it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village. None of these conditions were complied with, and the non-adherence to the procedure has rendered the proclamation illegal.

8. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, **2018:INSC:1039 [Para 47]**, 2018 (4) *Crimes* 324, Hon'ble Supreme Court holds

"[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated."

9. Given the above, continuing these proceedings will not suffice for fruitful purposes. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the order dated 04.06.2019, passed by JMIC, Amritsar and all subsequent proceedings arising out of the said order qua the petitioner, subject to the compliance of the following terms and conditions.

10. Petitioner's counsel submits that they will appear before the trial Court and they be given reasonable time to appear. It is clarified that because, as of date, the petitioner

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is aware of the proclamation and filing of the present petition, as such, let the petitioner appear before the concerned Court on or before 30.09.2024. Counsel for the petitioner shall inform the petitioner about the directions of this Court so he can make an appearance before the concerned trial Court. Given the statement made by the petitioner's counsel, they shall be deemed to have been informed about this order. It is clarified that if the petitioner fails to appear, then this order shall stand recalled automatically without any further reference to this Court resorting to Section 362 r/w 482 CrPC, for the reason that this Court has intervened without even getting a response from the State Government and the State Government did not insist to the filing of the response because of the statement made on behalf of the petitioner that he shall put in an appearance before the concerned Court.

11. In the entirety of facts and circumstances peculiar to this case, the present petition is allowed, and proclamation orders are quashed and set aside, subject to the condition that the petitioner shall appear before the concerned trial Court on or before 30.09.2024. The lookout circular (LOC) and non-bailable warrants issued against the petitioners in the abovementioned complaint shall remain stayed until 30.09.2024 to enable the petitioner to travel to India. It is important to note that this Court, while not fully satisfied with the explanation offered by the petitioner due to their awareness of the pending case and the issuance of the proclamation, has taken a lenient view. This leniency is extended to allow the petitioner to appear before the concerned trial Court.

12. Petition is partly allowed in aforesaid terms and conditions. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

03.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: NO.